

Appl. No. : **09/662,454**
Filed : **September 14, 2000**

REMARKS

Applicant wishes to thank the Examiner Leffers for the courtesy extended to Nancy Vensko, attorney of record, on September 13, 2004. The Interview Summary Form PTOL-413 summarizes the discussion held at the personal interview. The present response to the outstanding Office Action includes the substance of the Examiner Interview.

A. Disposition of Claims

By this amendment, Applicant has canceled Claims 46, 47, 49 and 50 without prejudice as being drawn to a non-elected invention and amended Claims 42, 45, 48, 51, 52, and 53. Thus, Claims 42, 45, 48, 51, 52, 53, 55, 56, and 57 are pending. This amendment is presented to make explicit that which was implicit in Claims 42, 45, 48, 51, 52, and 53 and thus for reasons unrelated to patentability. Support for the amendment is found throughout the specification, for example, as indicated on 4:32 – 5:21. No new matter has been added. Reexamination and reconsideration of the application, as amended, are respectfully requested.

B. Double Patenting

The Patent Office rejected Claims 42, 45, 48, and 51-53 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1, 2, 9, 19, 20, and 22 of U.S. Patent No. 6,153,421. A rejection based on nonstatutory type of double patenting can be avoided by filing a terminal disclaimer in the application in which the rejection is made. Applicant will defer filing a terminal disclaimer over prior patent No. 6,153,421 until the rejected claims are otherwise indicated to be in condition for allowance.

C. Compliance with 35 USC 112, second paragraph

The Patent Office rejected Claims 48, 51-53, and 55-57 under 35 USC 112, second paragraph, as being indefinite. Under MPEP 2173.02, the claims must be definite. First, the claims have been amended to conform to issued U.S. Patent No. 6,153,421 to indicate that the nucleic acids encode chimeric, etc. embodiments. Second, the claims have been amended to conform to the language in the patent specification further to indicate that the nucleic acids encode these embodiments. Third, the claims have been amended to conform to original claims 6-8 (Claim 48), original claims 9 and 10 (Claim 51) and original claims 11 and 12 (Claim 53) additionally to indicate that the nucleic acids encode these embodiments. For these reasons, the rejection under 35 USC 112, second paragraph, should be withdrawn.

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D. Claims 56 and 57

Finally, the Patent Office questioned the utility of Claim 57. The utility of Claim 56 remains unquestioned. This is because one utility of Claim 56 is to generate antibodies. Similarly, one utility of Claim 57 is to generate antibodies. Yanagi et al., Virology 244: 161 (1998), of record, at Fig 9 shows production of anti-HCV antibodies following transfection of a chimpanzee with an infectious clone of HCV. Additionally, as indicated in Yanagi et al., on page 169, col. 2, second full paragraph, the chimpanzee transfected in the study was chronically infected with hepatitis G virus. Thus in principle, previous infection with hepatitis C virus should not negate the production of anti-HCV antibodies.

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CONCLUSION

In view of the above, it is submitted that the claims are in condition for allowance. Reconsideration and withdrawal of all outstanding rejections are respectfully requested. Allowance of the claims at an early date is solicited. If any points remain that can be resolved by telephone, the Examiner is invited to contact the undersigned at the below-given telephone number.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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